

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Atty. Docket: RUSSELL-4

In re Patent Application of:

James A. RUSSELL *et al.*

Application No.: 10/591,224

I.A. Filed: March 4, 2005

For: TOLL-LIKE RECEPTOR 2 (TLR-2) HAPLOTYPES
PREDICT OUTCOME OF PATIENTS

Confirmation No.: 7819

Attn: PETITIONS

Washington, D.C.

November 21, 2008

PETITION TO VACATE HOLDING OF ABANDONMENT

U.S. Patent and Trademark Office
Customer Service Window
Randolph Building, Mail Stop
401 Dulany Street
Alexandria, VA 22314

Sir:

Applicant is in receipt of the Notice of Abandonment, mailed February 27, 2008, which **erroneously** states that the application is abandoned because of applicant's failure to file a response within the time period established by the Office Action mailed April 2, 2007.

It is respectfully requested that such Notice of Abandonment be vacated as being erroneous and that the present application be reinstated.

THE FACTS

Applicant timely and properly responded within the time period established by the Office Action dated April 2, 2007, by timely filing a Response on June 4, 2007.

As evidence that such Response was timely and properly filed on June 4, 2007, attached hereto is a xerographic copy of the return postcard date-stamped by the PTO Mail Room as having been timely received by the PTO on June 4, 2007.

As it appears that the Response filed on June 4, 2007, has been lost by and in the USPTO. The following documents were filed on that date and, where appropriate were dated June 4, 2007:

- Executed Declarations by inventors James Russell and Keith Walley,
- "Missing Requirements" Transmittal Sheet (listing papers being filed) and listing the requisite fee of \$65.00;
- Credit Card Payment Form paying the above \$65.00

- CD-ROM containing CRF of Sequence Listing¹ as required; and
- Paper titled "Submission of Sequence Listing in Computer Readable Form and Statements in Support of Sequence Listing Requirements," as required

Copies of those documents are being submitted herewith.

However, as the requisite fee has already been paid, this executed copy is not to be taken as authorization to charge said extension of time fee. No further fees are required at this time.

R E M A R K S

In view of the above evidence, it is clear that a Reply was timely and properly filed within the time period established by the Office Action mailed on April 2, 2007, and that the Notice of Abandonment was issued in error. Indeed, the postcard by itself should be sufficient, as MPEP Section 503 states:

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt of the PTO of all items listed thereon the date stamped thereon by the PTO.

It accordingly requested that the Notice of Abandonment be vacated and the present application be reinstated.

If a fee must be charged, please charge same to Deposit Account No. 02-4035, and then refund said fee as the holding of abandonment is erroneous and is entirely the fault of the PTO.

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¹ Since this submission is being electronically filed, the CRF and Paper versions of the Sequence Listing is being submitted as a .txt file and a .pdf file (rather than as a CD-ROM filed originally on June 4, 2007).